

***United States Court of Appeals
for the Second Circuit***



**PETITION FOR
REHEARING**

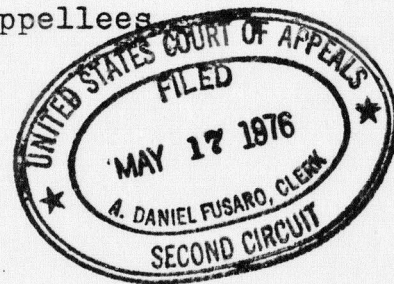
76-7013

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

PATRICIA A. FAHEY,
Plaintiff-Appellant,

v.

SHIRLEY E. FAHEY and NORMAN CODO,
Defendants-Appellees



PLAINTIFF-APPELLANT'S PETITION FOR RE-HEARING

PETITION FOR RE-HEARING
AND STAY OF MANDATE

Plaintiff appellant respectfully submits to this Court a Petition for Re-Hearing and a Stay of Mandate pending the rendering of the Federal Estate Tax Return (Form 706) together with all supplement data of the decedent, Patrick D. Fahey of Joliet, Illinois, filed in Kansas City, Missouri, Internal Revenue Center, Midwest Region, since it is the plaintiff's right to receive said Form 706, having a material interest according to Internal Revenue (I.R.C.) 24,315, Ch.12 of the code to ascertain any fact disclosed by the return.

In addition, the facts and statements from the part of the defendants-appellees, in their written brief and also at the oral argument of May 4th, 1976, which statements and facts, not being correct, have created a diversion from the true and central issue relevant to jurisdiction, as to the "other sources" and properties which are excluded from the estate.

Contrary to the defendants' statements and their construction of the Will on page - 4 of their brief, paragraph Third (A) of the last Will and testament of Patrick D. Fahey provides in total that unless Patricia A.

Fahey receives no less than \$2,000.00 per month, the defendants do not receive the residue of the estate of Patrick D. Fahey to administer or for distribution.

According to the terms of the Will, Section Third of the Will reads as follows:

"I give and devise the residue of my estate, excluding any property over which I have power of appointment, to the said SHIRLEY E. FAHEY and NORMAN F. CODO, as trustees, upon the following terms: (As executors under Pgh. Fifth of the Will)

A. The trustee shall distribute to any one or more of SHIRLEY E. FAHEY,..... provided, however, that PATRICIA A. FAHEY shall receive no less than Two Thousand 00/100 (\$2,000.00) Dollars per month from this trust and from other sources."

Wherefore, "the other sources" are not the plaintiff's personal income from work endeavour, as these defendants-executors and trustees attempt to suggest.

Consequently, ascertainment and verification of all the assets declared in said Will, such as: property over which the decedent has power of appointment (which are excluded from the estate); any other trust or estate of which the trustee is a fiduciary; property which passed or were

passing at the time of the Will to the decedent's spouse, and which (even though passing within the three years of decedent's death), outside the terms of the Will, are allowed for marital deduction; and a 50% gift in value of the gross estate for tax purpose, without all of which the Federal Estate Tax Return (Form 706) together with all Supplemental Data, filed within 9 months of the death of my father or the additional time extension allowed for such filing by the Internal Revenue Service will clarify the question.

The rendering of said Form 706 with all Supplement Data is most essential in establishing my rights in this jurisdictional controversy and to properties, which filing falls within the federal jurisdiction as stated in my brief and at oral argument on May 4th, 1976 to this Court and as included in the November 7th, 1975 Affidavit (the only affidavit filed by the plaintiff in the Southern District Court at the time of the Complaint).

Wherefore, I pray the Court that a Stay of Mandate under this Petition for Re-Hearing may be granted to the plaintiff-appellant, until the Form 706 together with all Supplement Data be rendered, directly or indirectly, as per plaintiff's rights in ascertaining any facts disclosed by the Return as imposed by Chapter 12 of the (I.R.C.) Code.

Patricia A. Fahey

PATRICIA A. FAHEY
PLAINTIFF APPELLANT
750 Park Ave., NYC 10021

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

PATRICIA A. FAHEY,

PLAINTIFF

V.

DOCKET NO. 76-7013

NORMAN F. CODO,

DEFENDANT

SHIRLEY E. FAHEY,

DEFENDANT

Plaintiff appellant hereby submits a
Petition for Re-Hearing.

Patricia A. Fahey

PATRICIA A. FAHEY
PRO SE
750 Park Avenue
New York, New York 10021

ADMISSION OF RECEIPT

Index No. 76-7013 YEAR 1976

The undersigned acknowledges
receipt of a copy of the
within: *Petition For Re-Hearing*

on *May 17* 19 *76*

at *2:55* o'clock *PMM*

Hall, Dupler, Lawler Kent
& Howley
Attorney(s) for *Defendants*

BY: *D. Van Allen*

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

PATRICIA A. FAHEY,
PLAINTIFF

V.

NORMAN F. CODO,
DEFENDANT

SHIRLEY E. FAHEY,
DEFENDANT

PETITION FOR RE-HEARING